

REMARKS

Claims 1-47 have been cancelled, without prejudice.

Claims 69-70 have been added.

Thus, claims 48-70 are pending.

In the Office Action mailed August 5, 2011, claims 48-54, 56-64, 66, and 67 were rejected under 35 U.S.C. § 103(a) as unpatentable over Tohyama (U.S. Publication No. 2002/0091645) in view of Lubbers (U.S. Publication No. 2003/079102); and claims 55, 65 and 68 were rejected under 35 U.S.C. § 103(a) as unpatentable over Tohyama in view of Lubbers and Official Notice.

It is respectfully submitted that the obviousness rejection of independent claim 48 over Tohyama and Lubbers is clearly erroneous.

To make a determination under 35 U.S.C. § 103, several basic factual inquiries must be performed, including determining the scope and content of the prior art, and ascertaining the differences between the prior art and the claims at issue. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). Moreover, as held by the U.S. Supreme Court, it is important to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007).

In the rejection of claim 48, the Office Action identified various elements of the claim that are purportedly disclosed by various passages of Tohyama, with the Office Action stating that such findings were affirmed by the Decision on Appeal dated May 5, 2011. The allegation that the Decision on Appeal addressed the claim elements of claim 48 is clearly erroneous. Note that the language of claim 48 was amended in the Amendment dated July 25, 2011—the Decision on Appeal clearly did not address the amended language of claim 48.

In fact, the Office Action conceded that Tohyama does not disclose a storage array controller. 08/05/2011 Office Action at 4. Moreover, the Office Action also conceded that Tohyama fails to disclose a service request that is a request to perform a data redundancy operation with the array of storage devices that implements RAID storage of data. *Id.* In view of such concession that Tohyama fails to disclose the

foregoing elements of claim 48, it is clear that this concession means that Tohyama fails to disclose the following elements of claim 48:

receiving, by a **storage array controller** that controls an array of storage devices, a **service request** from a requestor over a storage network, wherein the **service request** is a request to perform a data redundancy operation with the array of storage devices that implements RAID (Redundancy Array of Independent Disks) storage of data;

determining an amount of credit available on a local storage medium of the **storage array controller** for the requestor;

implementing the **service request** at the **storage array controller** in response to the amount of credit being sufficient to execute the **service request**;

in response to the amount of credit being insufficient to execute the **service request**,

transmitting, by the **storage array controller**, a token request for a service token to a server communicatively connected to the storage network;

receiving, by the **storage array controller**, a response to the token request transmitted by the server after the server validates the token request; and

executing the **service request** at the **storage array controller** in response to the response to the token request including an indication authorizing execution of the **service request**.

Note that the claims at issue that were the subject of the Decision on Appeal did not recite “storage array controller” and did not recite a service request that “is a request to perform a data redundancy operation with the array of storage devices that implements RAID ... storage of data.” Therefore, it is respectfully submitted that the findings of the Decision on Appeal have been rendered moot by the presence of claimed subject matter that was not before the Board.

It is clear that Tohyama clearly does not provide any teaching or hint of the foregoing combination of elements. Tohyama describes a software licensing system that includes a licensing terminal for storing a license menu, and a user terminal capable of accessing the licensed menu. Tohyama, ¶ [0009]. The licensing terminal can create and send to the user terminal a pass containing the term and number of times that usage of software is approved. *Id.* However, Tohyama provides no hint that its tasks are performed by a storage array controller that controls an array of storage devices, or that

its tasks are performed in the context of a service request that is a request to perform a data redundancy operation with the array of storage devices that implements RAID storage of data.

Recognizing the deficiency of Tohyama, the Office Action cited Lubbers as purportedly disclosing claimed subject matter conceded to be missing from Tohyama. 08/05/2011 Office Action at 4. Specifically, the Office Action pointed to ¶¶ [0082]-[0083] of Lubbers. Although these passages of Lubbers referred to storage controllers that manage RAID volumes, there is absolutely no hint that such storage controllers would perform any of the tasks recited in claim 48, which are also clearly not performed by Tohyama.

Therefore, even if Tohyama and Lubbers could be hypothetically combined, the hypothetical combination of the references would not have led to the subject matter of claim 48. Moreover, in view of the significant differences between the claimed subject matter and the teachings of Tohyama and Lubbers, a person of ordinary skill in the art would not have been prompted to combine the teachings of the references to achieve the subject matter of claim 48.

Specifically, the Office Action cited two disparate references, and used impermissible hindsight to piece together the teachings of the references to achieve the subject matter of claim 48. As noted above, Tohyama relates to a software licensing system that includes a licensing terminal for storing a licensed menu, and a user terminal capable of accessing the licensed menu. Such teachings of Tohyama are completely unrelated to the storage controllers for managing RAID volumes mentioned in Lubbers. A person of ordinary skill in the art would clearly have found no reason to incorporate the teachings of Lubbers into the software licensing system of Tohyama.

The Office Action argued that “the functionalities in Tohyama and Lubbers do not interfere with each other [and] the results of the combination would be predictable.” 08/05/2011 Office Action at 4. Such an allegation of predictability is clearly not based on any objective evidence of record, but is merely based on the use of impermissible hindsight to piece together unrelated teachings of Tohyama and Lubbers to achieve the subject matter of claim 48.

In view of the foregoing, it is respectfully submitted that the obviousness rejection of claim 48 over Tohyama and Lubbers is erroneous.

Independent claims 59 and 67 are similarly allowable over Tohyama and Lubbers. Note that the Office Action has similarly incorrectly stated that the Decision on Appeal of May 25, 2011 had affirmed any finding that the language of these claims appeared in Tohyama, since the language of claims 59 and 67 (as amended) were clearly not before the Board. The Office Action has similarly incorrectly stated that the Board had affirmed findings that features of various dependent claims were disclosed, since such dependent claims have also been amended and were not before the Board.

Dependent claims are allowable for at least the same reasons as corresponding base claims. Moreover, dependent claim 57 recites that the response to the token request comprises a software module, executable by the storage array controller for executing the service request. As with other elements of other claims, the Office Action also incorrectly noted that the Decision on Appeal dated May 5, 2011 addressed this element of claim 57. It is clear that Tohyama does not provide any hint of a response **to the token request comprising a software module** executable by the storage array controller, for executing the service request. Note that Tohyama relates to a software licensing system that determines whether access of software is approved. Tohyama, ¶¶ [0009], [0014], [0038], [0086]. According to claim 57, a token request is transmitted by the storage array controller for a service token to a server, and the response to the token request is received by the storage array controller, where the response to the token request is transmitted by the server after the server validates the token request. It is this response to the token request that comprises the software that is executable by the storage array controller for executing the service request for performing a data redundancy operation with the array of storage devices that implements RAID storage of data. It is clear that the subject matter of claim 57 is clearly not found in Tohyama, and claim 57 is therefore further allowable for the foregoing reasons.

Newly added dependent claims 69 and 70 are also further allowable for the similar reasons as claim 57.

With respect to dependent claims 55, 65, and 68, the Office Action conceded that the claimed subject matter of these references are not disclosed by Tohyama and Lubbers.

08/05/2011 Office Action at 9. However, the Office Action relied upon “official notice” as purportedly disclosing the claimed features missing from Tohyama and Lubbers. *Id.* However, the Office Action has not cited any objective evidence to support the allegation that decrypting an encrypted code contained in a response to a token request is a well-known feature. Absent objective evidence that would provide support for the taking of “official notice,” it is respectfully submitted that the taking of “official notice” in the obviousness rejection of claims 55, 65, and 68 is erroneous, and is therefore traversed by Applicant.

Allowance of all claims is respectfully requested.

The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (82099400).

Respectfully submitted,

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